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IN THE COURT OF APPEALS OF INDIANA

MARK PADGETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0609-CR-816
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Judge
Cause No. 49G04-0602-FB-035575

June 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Mark Padgett appeals his conviction for arson as a class B felony.[1] Padgett raises one issue, which we restate as whether the evidence is sufficient to sustain Padgett's conviction. We affirm.

The relevant facts follow. On the evening of February 26, 2006, Padgett argued with his sister, Elizabeth Doss, with whom he was staying. Doss was moving out of her house, and she asked Padgett to move out by the first of March. Padgett later called Doss from a nearby tavern and said that he was going to burn her house down. Shortly thereafter, Padgett called his mother and asked her if she would "turn him in" if he burned Doss's house down. Transcript at 16. Doss and the mother then drove to Doss's house. When they arrived, fire engines were present, and the house was in flames.

During the week preceding the night in question, Doss had been staying with her boyfriend. However, she made frequent visits to the house. Her children were staying there until the day before the fire. All the utilities in the house were functioning, and all her furniture, clothing, and kitchen utensils remained there and were destroyed in the ensuing fire.

The State charged Padgett with: (1) two counts of arson as a class B felony; and (2) intimidation as a class D felony.[2] The trial court granted a motion to dismiss the second count of arson. After a bench trial, the trial court found Padgett not guilty of intimidation as a class D felony but found Padgett guilty of arson as a class B felony.

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[1] Ind. Code § 35-43-1-1 (2004).
[2] Ind. Code § 35-45-2-1 (2004) (subsequently amended by Pub. L. No. 3-2006, § 2 (eff. March 2, 2006)).

The trial court sentenced Padgett to the Indiana Department of Correction for a term of ten years, with four years suspended and two years of probation upon his release.

The sole issue is whether the evidence is sufficient to sustain Padgett's conviction for arson as a class B felony. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of arson is governed by Ind. Code § 35-43-1-1(a), which provides that "[a] person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages: (1) a dwelling of another person without the other person's consent . . . commits arson, a class B felony." The legislature has defined the term "dwelling" as "a building, structure, or other enclosed space, permanent or temporary, movable or fixed, that is a person's home or place of lodging." Ind. Code § 35-41-1-10 (2004). Thus, to convict Padgett of arson as a class B felony, the State needed to prove that Padgett, by means of fire, explosive, or destructive device, knowingly or intentionally damaged Doss's dwelling without Doss's consent.

Padgett argues that the evidence is insufficient to support his conviction because the house was not Doss's dwelling. Specifically, he argues that Doss had moved out a week before the fire and had no home. In cases of arson where the victim is either moving in or out, a test for determining whether the damaged structure was the victim's

dwelling is whether the victim intended to retain her right of dominion and return to the premises. See White v. State, 846 N.E.2d 1026, 1031 (Ind. Ct. App. 2006) (citing Byers v. State, 521 N.E.2d 318, 319 (Ind. 1988)), trans. denied. In White, although the victim had not yet finished moving in when the house was destroyed by fire, we held that the presence of the victim's furniture, clothing, and appliances showed the requisite intent to retain his right to dominion and to return to the premises. Id. Similarly, in Brown v. State, we found sufficient evidence to uphold a conviction for burglarizing a dwelling where the victims were moving out of an apartment but still had keys to the doors, functioning utilities, and had not yet removed all of their personal belongings. 580 N.E.2d 329, 330 (Ind. Ct. App. 1991).

Here, despite the fact that Doss was staying somewhere else, she made frequent visits to the house. All her furniture, clothing, and kitchen utensils remained there, and the utilities were functioning. The evidence clearly shows Doss's intent to retain her dominion over the house and to return to the premises. Accordingly, the State proved that the house was Doss's dwelling during the night in question. Given the facts of the case, we conclude that the State presented evidence of probative value from which a reasonable trier of fact could have found Padgett guilty beyond a reasonable doubt of arson as a class B felony. See, e.g., White, 846 N.E.2d at 1036 (holding that the evidence was sufficient to sustain the defendant's conviction for arson as a class B felony).

For the foregoing reasons, we affirm Padgett's conviction for arson as a class B felony.

Affirmed.

MAY, J. and BAILEY, J. concur